

Resolution No.:	16-1481
Introduced:	September 21, 2010
Adopted:	September 21, 2010

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY**

By: County Council

SUBJECT: APPLICATION NO. G-885 FOR AMENDMENT TO THE ZONING ORDINANCE
MAP, Jody S. Kline, Esquire, Attorney for Applicant, Bowie Mill Road, LLC,
OPINION AND RESOLUTION ON APPLICATION Tax Account No. 08-00702264.

OPINION

Application No. G-885, filed on August 11, 2009, by Applicant Bowie Mill Road, LLC, requests reclassification of a 32.74-acre parcel of unimproved land from the R-200 Zone to the PD-3 Zone. The Property is owned by the Montgomery County Government and is known as Parcel P850. It is located at 18241 Bowie Mill Road, about half a mile west of Laytonsville Road, in Olney, Maryland. The Applicant and the County have entered into a "Development Agreement and Agreement of Sale and Purchase," which is in the record as Exhibit 84.

The Applicant proposes to develop the property with 114 residential units, at least 40% market-rate units, 30% Moderately Priced Dwelling Units (MPDUs), and 30% Workforce Housing (WFH) units.¹ This plan will result in 46 market rate units, 34 MPDUs and 34 WFH units. No commercial uses are proposed.

The application for rezoning was reviewed by the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC), who in a report dated April 9, 2010, recommended

¹ There is a binding element on the second page of the Land Use Plan (Exhibit 132(b)), which provides for a minimum of 50% affordable housing requirement; however, Applicant's development agreement with the County (Exhibit 84, p. 3) and the "informational" development standards on the first page of its Land Use Plan (Exhibit 132(a)) call for 30% of the units to be MPDUs and 30% to be WFH.

approval (Exhibit 65). The Montgomery County Planning Board (“Planning Board”) considered the application on April 22, 2010, and, by a vote of 5 to 0, also recommended approval, as stated in a memorandum dated April 23, 2010 (Exhibit 71).²

Over eighty opposition letters were received from the neighboring community. The opposition centers around compatibility and traffic concerns; however, much of the compatibility concern involved Applicant’s plan to develop 24 “2 over 2” townhouse units on the site, a plan which was later changed.

A public hearing was held on May 3, 2010. Applicant called five witnesses, and Joseph Giloley of the County’s Department of Housing and Community Affairs also testified in support of the application. Five opposition witnesses testified, including four from local civic and homeowners associations. In addition, a petition was filed by 21 adjacent and confronting property owners, stating their opposition to the rezoning because they “feel the density of the current plan is not compatible with the adjacent communities.” Exhibit 75. The People’s Counsel participated in the proceedings and supported the application, on condition that the “2 over 2” units be eliminated. Tr. 334-335.

The record was held open until May 19, 2010, for additional submissions by Applicant and comments thereon by Technical Staff and interested parties. On May 21, 2010, after an exchange of correspondence with the Hearing Examiner, Applicant submitted a revised development plan (Exhibits 132(a) and (b)), which added a new binding element prohibiting “two-over-two” dwelling units; modified the first binding element by reducing the total number of units planned for the site to 114; added a binding element requiring single-family, detached dwelling units on lots of a compatible size along Darnell Drive and Daly Manor Place; made corresponding changes on the site layout, in the General Notes and in the Development Standards; and corrected minor typographical errors in the

² In that same memorandum, the Planning Board noted that “serious consideration should be given for alternative detached housing types to that of the 2 over 2s while maintaining the proposed unit numbers to a maximum of 117.” This goal was accomplished by Applicant agreeing, after the hearing, to a binding element precluding “2 over 2” units.

Plan. The record was therefore reopened on May 24, 2010, to receive the revised development plan and commentary by Technical Staff and interested parties. Exhibit 134.

On June 1, 2010, Technical Staff indicated that it had no objection to Applicant's revised plans and binding elements. Exhibit 136. After receiving additional filings from Applicant, the record closed again on July 8, 2010.

The Hearing Examiner's Report and Recommendation was filed on July 28, 2010, and it is incorporated herein by reference. The Hearing Examiner recommended approval on grounds that the proposed development satisfies the intent, purpose and standards of the PD-3 Zone; that it meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested reclassification to the PD-3 Zone has been shown to be in the public interest.

Based on its review of the entire record, the District Council finds that the application does meet the standards required for approval of the requested rezoning for the reasons set forth by the Hearing Examiner.

The Property, Surrounding Area and Zoning History

The 32.74-acre subject property is located on the south side of Bowie Mill Road and has approximately 950 feet of frontage along that street. The lot is shaped like a rectangle with a notch missing from its northeast corner. The property is currently undeveloped and contains streams, 1.2 acres of wetland and 6.7 acres of wooded area (including 41 specimen trees), some of which will be retained as part of the Forest Conservation requirements.

The topography of the property is reasonably level but drops downward from the grade of Bowie Mill Road that abuts the northern side of the parcel of land. The land slopes towards an intermittent watercourse that traverses diagonally across the western half of the property. The

wetlands are located in the western half of the site, and they are outside of the area of disturbance for the new development.

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The “surrounding area” is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, the surrounding area boundaries are the North Branch Stream Valley Park/Laytonsville Road (MD 108) on the north; Laytonsville Road/Georgia Avenue (MD-97) on the east; Morningwood Drive /Headwaters Drive on the south; and North Branch Stream Valley Park on the west.

The land use within the surrounding area is predominantly single-family detached residences in the R-200, RE-1 and RE-1/TDR zones. Adjoining the property along its northern boundary is Bowie Mill Road, which extends from Muncaster Mill Road to Laytonsville Road (Route 108). To the north of Bowie Mill Road are the single family residential communities of “Briars Acres” and “Oatland Farm.” To the west of the subject property is a PEPCO transmission line that is approximately 250 feet wide. Further to the west are the residences of the “Olney Acres” subdivision. Abutting the property along the south is the “Olney Oaks” neighborhood. To the east of the subject property, extending to Route 108, is the “Olney Square” neighborhood.

Thus, the subject property adjoins residential properties to the south and east. Confronting the subject property across Bowie Mill Road to the north are single-family residences in the R-200 zone. The area also includes local recreational facilities and neighborhood parks. Some retail and light commercial uses are located at the eastern end of the neighborhood along MD 108, but the character of the neighborhood is almost exclusively residential.

The zoning history was reported by Technical Staff. The site was placed in the R-R Zone when that zone was created and mapped in the 1954 Regional District Zoning. The 1958 County-Wide Comprehensive Zoning confirmed the R-R zoning of the site, and the R-R Zone was renamed R-200 in 1973. The 1980 Master Plan for Olney recommended the site for a high school. The 2005 Olney Master Plan recommended a base zone of R-200, with development under the PD-3 Zone by Local Map Amendment. The 2005 Olney Sectional Map Amendment (G-838) implemented the Master Plan's recommendations.

Proposed Development

Applicant is proposing a 114-unit residential development separated into two parts by the stream valley and forest that divide the western portion of the property. Development of the site is under a negotiated agreement with the County government, which commits the Applicant to providing at least 40% market-rate units, 30% MPDUs and 30% Workforce Housing (WFH) units. Exhibit 84, p. 3. To effectuate this agreement, the site would be constructed with 46 market rate units, 34 MPDUs and 34 WFH units. No commercial use is proposed.

Thus, the proposal would use a publicly owned vacant parcel of land to produce a residential community with a wide mix of dwelling unit types containing both market-priced residences and affordable housing, but with a strong emphasis on the latter. The community would be accessed by two streets connecting to Bowie Mill Road. The larger section of the community is organized around an entrance roadway, almost a boulevard, which loops through the southern portion of the site to provide a simple but effective circulation system for both vehicle and pedestrian traffic. The smaller section of the community, located in the northwest corner of the site, has been designed to take advantage of the easy accessibility to the large green area running from Bowie Mill Road to the southwest corner of the property.

Development Plan & Binding Elements

Pursuant to Code § 59-D-1.11, development under the PD-3 Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD-3 Zone. Under Code §59-D-1.3, this development plan must contain several elements, including a land use plan. Illustrative and conceptual elements may be changed during site plan review by the Planning Board, but the binding elements (*i.e.*, those that the District Council will consider in evaluating compatibility and compliance with the zone) cannot be changed without a separate application to the District Council for a development plan amendment.

The final Land Use Plan for the present zoning application is contained in Exhibits 132(a) and (b). Although land use plans are technically only a part of the overall development plan, they are usually referred to as the “development plan,” and may be so referenced herein. It contains a site layout, a listing of all the binding and non-binding elements and other notations.

The proposed Development Plan is divided into two pages. Page 1 (Exhibit 132(a)) contains an illustrative site layout, a development standards table, a recreational amenities table, general notes

BINDING ELEMENTS	
CATEGORY	BINDING ELEMENT
Density	There will be not more than 114 dwelling units constructed on the subject property.
Unit Affordability	At least one-half of the units to be constructed will be deemed affordable under the County's moderate priced dwelling unit and/or work force housing programs.
Screening	Landscape screening at the rear of proposed Lots 1 through 4, Block A, and along the east side of proposed Street A (behind existing Lots 16-19, Block E, OLNEY SQUARE subdivision), will be provided. Details of such plantings (e.g., quantity, species, caliper, and spacing) shall be determined at the time of site plan review.
Unit Type	No dwelling units commonly known as "two over twos" will be permitted.
Lot Use / Lot Size	The dwelling units to be located on the perimeter of the subject site abutting single family detached homes on Darnell Drive and Daly Manor Place will all be single family detached units and the lot sizes will be approximately the same size as shown on the Development Plan. There may be open play area on the southern property line abutting existing Darnell Drive homes.

and site data. Page 2 (Exhibit 132(b)) contains an expanded illustrative site layout and a listing of the binding elements agreed to by the Applicant. The binding elements from the Land Use Plan are set forth below:

The diagrams and text show the proposed locations of all structures, roadways, open spaces and dedicated areas, as well as additional information regarding the planned development. However, as noted on the Development Plan, the specific lot configurations, building locations, parking locations, community features and other design details will be refined and finalized during subsequent subdivision and Site Plan review proceedings.

The final two binding elements were agreed to by Applicant after the hearing, and approved by Technical Staff. Exhibit 136. Applicant's agreement to foreclose the use of "two over two" dwelling units eliminated one of the chief concerns of the Planning Board and the neighbors. The binding element specifying the use of single-family detached homes on the perimeter, adjacent to existing single-family homes, was added at the request of the Hearing Examiner to ensure compatibility with the abutting neighbors. This addition was consistent with Applicant's plans, as reflected in its "Urban Fabric" plan (Exhibit 109), but had not been previously specified as a binding element.

According to Technical Staff, the development data provided by Applicant will meet the development standards for the PD-3 Zone, including the minimum of 30% green area required by the Zone (§59-C-7.16). Exhibit 65, pp. 14-19. Applicant has depicted approximately 44.9% green area. The project also projects providing 243 parking spaces, more than the 228 spaces required for 114 dwelling units.

Required Findings

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for re-zoning to the PD-3 Zone, to consider whether the application, including the

development plan, fulfils the “purposes and requirements” set forth in Code Section 59-C for the new zone. In making this determination, Zoning Ordinance §59-D-1.61 expressly requires the District Council to make five specific findings, and Maryland law requires that zoning power be exercised in the public interest.

§59-D-1.61(a): Consistency with Master Plan and other County Policies.

The first required finding is consistency with the use and density requirements of the Master Plan and with other County plans and policies.

The subject site is located in the area analyzed in the 2005 Olney Master Plan. The Master Plan, at pp. 37-38, specifically addresses the subject site and recommends the full yield allowed by the PD-3 Zone if specified objectives have been met. As discussed by the Hearing Examiner, the revised development plan proposed by Applicant meets the five criteria outlined in the Master Plan:

1. At least half of the dwelling units will be MPDUs or WFH under the second binding element. Moreover, an even higher percentage of affordable housing (60%) is required by Applicant’s agreement with the County. As stated by Joseph Giloley, on behalf of the Montgomery County Department of Housing and Community Affairs, “This commitment of affordable units satisfies a requirement for affordable units in the Olney Master Plan.” Tr. 21.
2. The development has been designed to preserve the environmental features.
3. The proposed density will be below the maximum permitted in the zone, and the un rebutted expert evidence from Technical Staff and Applicant’s experts is to the effect that the development will not overwhelm the available public facilities.
4. The lot sizes and the mix of housing types have been located so as to ensure compatibility with adjacent properties. The issue of whether “two over two” units are multi-family has been eliminated since Applicant agreed by binding element to preclude their use.
5. No commercial development is planned for the site.

The other recommendations of the Master Plan have also been followed. The development will provide affordable and compatible housing in the PD-3 Zone, and it has been designed with open space connected to the adjoining residential community through a proposed network of roads and

pedestrian trails, as shown in Applicant's plans illustrating streets connecting open spaces (Exhibit 110), amenity areas (Exhibit 112) and pedestrian connections (Exhibits 113 and 94).

As noted in the Technical Staff report (Exhibit 65, pp. 6-7), Community-Based Planning staff found the proposed plan to be consistent with the Olney Master Plan and supports approval of the subject application, as did Technical Staff's Development Review Division. The Planning Board also found the application to be in substantial compliance with the Olney Master Plan. Exhibit 71. The opposition disagreed based on their concerns about compatibility and the adequacy of transportation facilities, both of which were discussed at length in the Hearing Examiner's report. Given the expert evidence regarding the adequacy of transportation facilities, the binding elements protecting compatibility and the unrebutted evidence that the development will provide the called-for affordable housing, the District Council finds that the proposed development meets the specified objectives and is in substantial compliance with the Master Plan's use and density recommendations, as "Finding (a)" requires.

Under the County's Adequate Public Facilities Ordinance ("APFO," Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether the following public facilities will be adequate to support a proposed development: transportation, schools, water and sewage facilities, and police, fire and health services. The Planning Board's application of the APFO is limited by parameters that the County Council sets in its Growth Policy.

While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is relevant to the District Council's determination in a rezoning case, as spelled out in Zoning Ordinance §59-H-2.4(f). That section requires Applicant to produce "[s]ufficient information to demonstrate a reasonable probability that available public

facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application is submitted.”

In this case, the application was submitted on August 11, 2009, so the 2007-2009 Growth Policy adopted November 13, 2007 (Resolution 16-376) will apply to the rezoning determination. The 2007-2009 Growth Policy provides, at pp. 22-23, “[t]he Planning Board and staff must consider the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated.” There is no such evidence in this case, and the District Council therefore concludes those public facilities are adequate. The remaining three public facilities – transportation, schools and water and sewer service – were discussed at length in the Hearing Examiner’s report. For the reasons stated therein and summarized below, the District Council finds that the proposed development will not unduly burden the County’s public facilities.

1. Traffic Impact:

Concerns about traffic impacts were raised by a number of community witnesses. They noted that there is already a lot of traffic on Bowie Mill Road, which is the only roadway accessing the subject site, and they fear that the addition of the proposed development will make matters worse.³ Tr. 212-213; 230-233; and 319-320. Numerous opposition letters raised the same point. *See e.g.*, April 14, 2010 letter of Briars Acres Community Association (BACA), Exhibit 66, and April 23, 2010 letter of the Greater Olney Civic Association (GOCA), Exhibit 69(b).

This issue was addressed both by Applicant’s expert in transportation planning, Edward Papazian (Exhibit 103 and Tr. 242-262), and by M-NCPPC’s transportation planning staff (Exhibit 65).

Edward Papazian prepared a traffic impact study for the proposed re-zoning in accordance with the Planning Board’s local area transportation review and policy area mobility review, commonly

³ Bowie Mill Road is a two-lane primary residential road with a minimum right-of-way width of 80 feet.

referred to as the LATR and PAMR guidelines. Mr. Papazian performed peak period traffic counts in accordance with the Planning Board's guidelines, and he identified the a.m. and p.m. peak hour traffic volumes at each of the intersections. He then calculated background traffic volumes.

Background traffic volume includes the forecasting of future traffic based on the approved and unbuilt developments in the area and any fully funded changes in the area roadway system that would affect the future traffic volumes. In this case, that includes the imminent construction and completion of the Inter-County Connector (ICC). Mr. Papazian used background documents prepared by the State Highway Administration to identify the approximate levels of reduction on key roadways in the study area as a result of the construction of the inter-county connector. The ICC will open in the next year or two, and the resulting reduction is included in his forecast of future traffic.

As documented in his traffic impact study, there would be an expected reduction of at least 10 percent on key roadways in the area due to the construction and use of the Inter-County Connector. Technical Staff agreed that a 10 percent reduction in through-traffic volumes and turning movements at key intersections would be appropriate for forecasting for future condition because of the effects of the ICC. As a result, there was a reduction in the critical lane volume at some intersections even after adding in background traffic volumes.

Mr. Papazian performed capacity analysis at the area intersections. Capacity analysis determines the critical lane volumes (CLV) at the studied intersections and compares them to the congestion standard of the policy area where the intersections are located. Two policy areas are involved in this traffic study, the Olney Policy Area, which has a congestion standard of 1,450 CLV, and the Rural East Policy Area, which has a congestion standard of 1,350 CLV. Mr. Papazian's CLV findings are reported in a table in the Technical Staff report (Exhibit 65, p. 9):

Mr. Papazian's findings indicate that the area intersections will operate at acceptable levels of service under total future conditions, and therefore, the LATR requirements are satisfied. The one

intersection that is currently operating over the congestion standard in the morning peak hour (1,371 CLV at Bowie Mill Rd/Muncaster Mill Rd) will operate within that standard (at 1,265 CLV) even after the subject development is added in because of reductions effectuated by the ICC. Mr. Papazian suggested that, at the time of preliminary plan review, a signal warrant analysis will be performed to see if a traffic signal is justified for the intersection of Cashell and Bowie Mill Road (to the west of the subject property), which is presently governed by a four-way stop sign that causes some of the backup on Bowie Mill Road.

Mr. Papazian also reviewed the PAMR guidelines, for policy area mobility review. The Olney policy area, calls for a 10 percent partial mitigation of peak hour trips. That means, given the fact that the p.m. peak hour is estimated to generate about 113 trips, based upon the trip generation rates that Technical Staff directed him to utilize, 11 trips would have to be mitigated to satisfy PAMR. Applicant has proposed to meet this requirement, after discussing it with County Department of Transportation (DOT), by the installation of sidewalks along Bowie Mill Road. Those sidewalks are off site, away from the site frontage, and would satisfy the PAMR requirements. This plan may be refined at the time of preliminary plan, but the County DOT agrees with the idea of using sidewalks as the basis for meeting the PAMR mitigation requirements.

In Mr. Papazian's professional opinion, the transportation network in the surrounding area would be adequate to accommodate the vehicle trips generated by this new development. Technical Staff reviewed the issue of transportation facilities in their report (Exhibit 65, pp. 8-10). Their conclusion was "that adequate solutions to be addressed at preliminary plan are available to satisfy or mitigate any transportation related potential impact concerning the proposed project . . ." Exhibit 65, p. 8. The County's DOT also indicated in a March 22, 2010 letter attached to the Technical Staff report that it does not object to the proposed rezoning.

Given the review by both M-NCPPC Technical Staff and DOT Staff, and the absence of any expert evidence to the contrary, the District Council finds that there is a reasonable probability that available public transportation facilities and services will be adequate to serve the proposed development, in spite of the concerns of the neighbors.

2. School Capacity:

The subject property is located within the Sherwood Cluster and is served by Olney Elementary School, Rosa Parks Middle School and Sherwood High School. In a letter dated March 26, 2010, Bruce H. Crispell, Director of Planning and Capital Programming for Montgomery County Public Schools (MCPS), reported to Technical Staff that the proposed development is expected to generate approximately 37 elementary school, 16 middle school, and 20 high school students.

Mr. Crispell indicated that enrollment at Olney Elementary School is currently within capacity and is projected to stay within capacity. Enrollment at both Rosa Park Middle School and Sherwood High School currently exceeds capacity but is trending down and is projected to be within capacity beginning in 2011-2012.

Mr. Crispell concluded by stating that “[t]he current Growth Policy schools test (FY 2010) finds capacity adequate in the Sherwood Cluster.” (Attachment to Exhibit 65). Although Mr. Zaborsky of GOCA raised a concern about public school capacity given economic conditions (Tr. 320-321), there is no evidence in the record to suggest that school capacity will be inadequate.

Given the fact that capacity is adequate under the current Growth Policy schools test, the District Council finds that it is reasonably probable that public school facilities and services will be adequate to serve the proposed development.

3. Water and Sewer Service:

Edward Wallington, Applicant's civil engineer, testified that there is ample infrastructure for water and sewer service. There is an existing eight-inch sewer line already on the property that runs through the stream buffer. According to Mr. Wallington, an eight-inch sewer is certainly sufficient for the additional units. Also, on Bowie Mill Road, there is a 24-inch water main that is quite large and is easily adequate for the water demands that would come with the proposed units. Attached to the Technical Staff report, there is a memo from the Washington Suburban Sanitary Commission (WSSC) noting that the impact of this project would be negligible. Tr. 286-287.

Given WSSC's memorandum and Mr. Wallington's expert testimony, the District Council finds that Applicant has demonstrated a reasonable probability that available water and sewer facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards.

In sum, based on this record, the District Council finds that the requested rezoning does not conflict with "other applicable County plans and policies."

§59-D-1.61(b): purposes, standards and regulations of the zone; safety, convenience and amenity of residents; and compatibility with adjacent development.

The second required finding is:

That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.

1. Compliance with the Purposes, Standards and Regulations of the Zone

Planned Development (PD) zones are a special variety of floating zone, with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-specific criteria, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings.

Section 59-C-7.11, Purpose Clause

The PD Zones have a lengthy purpose clause, Zoning Ordinance §59-C-7.11, which is linked to the goals of the applicable master plan.

As discussed above, the proposed development will be in substantial compliance with the 2005 Olney Master Plan. Accordingly, the requested reclassification will comply with the first element of the PD Zone's purpose clause by allowing implementation of applicable Master Plan objectives.

The second paragraph of the purpose clause calls for a design which will facilitate social and community interaction, create a distinctive visual character, and offer a balanced mix of uses. As observed by Technical Staff (Exhibit 65, p. 14), "The design and layout of the proposed development also provides maximum social and community interaction through pedestrian and vehicular linkages and, as such, it would provide for the safety, convenience and amenity of residents and assure compatibility with the surrounding residential land uses."

The proposed development will provide several greens, play areas, tot lots, seating areas and open spaces (as shown in Exhibit 112) to allow gathering space for the community and encourage social and community interaction. These features will contribute to the desired "distinctive visual character" of the development. Added to this will be a network of pedestrian paths which will connect the open areas to the proposed residences and to adjacent developments, thereby maximizing social and community interaction. See Exhibits 113 and 94. There will be no commercial uses on site because the Master Plan does not envision any, but there will be a mix of residential and recreational uses.

The third paragraph of the purpose clause encourages "a broad range of housing types." The proposed development will provide for a range of different sized single-family detached homes, single-family attached units and townhouse units on differing sized lots. Thirty percent of these units will be

MPDUs ; thirty percent will be workforce housing; and forty percent will be market-rate units. It will thus provide a broad range of housing choices.

The fourth and fifth paragraphs address trees, grading and open space. The areas to be developed as part of this proposal are primarily on existing open fields, thereby preserving much of the existing forest on the property. As already mentioned, the proposal will provide a great deal of open space, including several greens and play areas to allow an area for community recreation.

The sixth paragraph calls for pedestrian circulation networks to minimize reliance upon automobiles. The development plan here provides for a network of pedestrian paths which will clearly reduce reliance upon automobiles.

The large scale advocated in the seventh paragraph of the purpose clause is provided by a development of over thirty-two acres in size.

The eighth paragraph of the purpose clause calls for a development which provides for safety, convenience, amenity, and compatibility, and the ninth paragraph reiterates the need for a development that will be proper for the comprehensive and systematic development of the County, and consistent with the Master Plan and the Zone. Safety will be discussed below in connection with the third required finding, called for in §59-D-1.61(c). As noted there, the proposed access ways and internal circulation systems will be adequate and safe. Convenience and amenities include the pedestrian networks and park areas which were discussed above in this section.

Compatibility was discussed at length in Part III.E. of the Hearing Examiner's report, and despite concerns expressed by the community, the Hearing Examiner found that the weight of the evidence established that the proposed development will be compatible with surrounding uses, subject to the later detailed review at Site Plan and Subdivision. The District Council also finds that the proposed development will be compatible with surrounding development, and that details regarding the specific sizes, placements and exteriors of individual dwelling units, as well as the appropriate

dispersal of MPDUs, are more properly left to site plan and subdivision. The District Council further finds that the binding elements included in the proposed development plan adequately ensure compatibility with existing development in the surrounding area.

The PD Zone requires that a certain percentage of the dwelling units be townhouse or attached. Since both the Planning Board and the Council approved the Master Plan recommendation for the PD-3 Zone on this site, it was clearly determined that this type of development would be generally compatible with its surroundings, if the criteria specified in the Master Plan were met. Based on the entire record of this case, especially the evaluation of the Technical Staff and the Planning Board, those criteria were met.

Technical Staff concluded that the development plan would satisfy the zone's purpose clause, including compatibility with the surrounding area. As stated by Technical Staff (Exhibit 65, p. 14),

Reclassification of the subject property from the R-200 Zone to the PD-3 Zone satisfies the design, housing, amenity, circulation, and other purposes of the PD Zone. Staff finds that development of the site under the PD-3 Zone is proper for the comprehensive and systematic development of the County, will accomplish the purposes of the zone, and will be in substantial compliance with the General Plan and the 2005 Olney Master Plan that specifically recommended the site for the type of development that is proposed in this application.

The Planning Board adopted Technical Staff's findings (Exhibit 71). Despite the concerns voiced by the opposition, there was no contrary expert evidence presented. The Hearing Examiner also agreed. Considering the evidence in this case, the District Council finds that the subject development will provide the kind of housing mix and general-benefit open space recommended by the Purpose Clause, as well as pedestrian interconnectivity and compatibility with its surroundings.

In sum, the proposed development is consistent with the intent and purposes of the PD-3 Zone. We next look to the "standards and regulations" of the PD-3 Zone. The standards and regulations of the PD-3 Zone are spelled out in Code Sections 59-C-7.12 through 7.18.

Section 59-C-7.121, Master Plan

Pursuant to Code §59-C-7.121, “no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted Master Plan which shows such land for a density of 2 dwelling units per acre or higher.” The applicable Master Plan, the 2005 Olney Master Plan, recommends that the subject property be developed under the PD-3 Zone, which permits 3 dwelling units per acre, plus additional density for the inclusion of MPDUs. Accordingly, this provision is satisfied in this case.

Section 59-C-7.122, Minimum Area

Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. Alternative criterion (a) requires that the site “contain sufficient gross area to construct 50 or more dwelling units under the density category to be granted.” The subject property contains 32.74 acres, more than large enough to construct 50 dwelling units. It is in fact proposed for the construction of 114 dwelling units.

Section 59-C-7.13 and 7.131, Residential Uses Permitted

Pursuant to Code §59-C-7.131, single-family attached (including townhouses) and detached units are permitted in the PD-3 Zone, but it also specifies that in a development of fewer than 200 units, multi-family dwellings are not permitted. Moreover, a minimum of 35% of the units must be detached and a minimum of 35% must be attached or townhouse. Here, the proposed Development Plan provides for 50% single-family detached units (57 units) and 50% single-family townhouse and/or attached units (57 units), satisfying this requirement.

Section 59-C-7.132, Commercial Uses

There are no commercial uses proposed here.

Section 59-C-7.133, Other Uses Permitted

Under subsection (a) of this provision of the PD Zone, recreational facilities intended for the exclusive use of the residents and their guests are permitted. The remaining subsections do not appear to be applicable to this case.

Section 59-C-7.14, Density of Residential Development

Three subsections (a), (b) and (c) apply to this case. Subsection (a) sets forth the available density categories for residential development in a PD Zone. In this case, the density category specified in the development plan is PD-3, which is the category recommended in the 2005 Olney Master Plan.

Subsection (b) requires the District Council to determine the propriety of the density category applied for, and Subsection (c) allows the maximum density allowed under subsection (a) to be increased to accommodate the construction of Moderately Priced Dwelling units.

The density category applied for, PD-3, is the second lowest density available in the PD Zones, and is specifically recommended in the 2005 Olney Master Plan. The base density allowed for a site of this size in the PD-3 Zone is three Dwelling Units per acre. Multiplying that by 32.74 acres yields a maximum base density of 98.22 Dwelling Units. However, consistent with the Subsections C-7.14 (b) and (c), the Applicant is entitled to a Bonus Density of 22% because it will provide more than 15% MPDUs. Montgomery County Code §25A-5(c). Multiplying 98 dwelling units by 22% yields a bonus density of 21 dwelling units. Adding that density to the base density of 98 results in a permissible maximum density of 119 dwelling units. As noted, Applicant proposed 114 dwelling units (*i.e.*, well under the maximum density permitted). The District Council finds that to be an appropriate density for the site.

Section 59-C-7.15, Compatibility

Section 59-C-7.15 requires a finding of compatibility and specifies that only single-family detached homes may be constructed within 100 feet of any adjoining single-family detached zone. It also prohibits buildings constructed to a height greater than its distance from such adjoining land.

As previously discussed, Technical Staff, the Planning Board and the Hearing Examiner found that the proposed development will be compatible with surrounding development. Moreover, as noted by Technical Staff (Exhibit 65, p. 17),

The plan also provides a winding and scenic pedestrian connection between the two sections of the project. The larger portion of the development . . . is designed in such a manner that only the single family houses will be on the periphery of the development adjoining the existing residential dwellings. The townhouses and . . . [other units] in this portion of the development are located in the interior of the development surrounded by the single-family dwellings and the forest conservation area. The proposed single-family detached houses adjoining the existing residential properties are designed in a manner that is compatible with the properties that they are abutting and confronting in terms of lots sizes and density.

There will be no buildings other than single-family detached homes within 100 feet of the adjoining single-family detached developments,⁴ and no buildings are proposed to a height greater than its distance from such adjoining land. Thus, the District Council finds that all the setbacks proposed for this development are compatible with adjacent development.

Section 59-C-7.16, Green Area

This section of the Ordinance requires 30% green space for the PD-3 Zone, and the Development Plan more than satisfies that requirement with a proposal for 44.9% green space. Technical Staff found that the proposed development plan satisfies the green space requirement, but

⁴ A small section of the proposed development, which includes townhouses and other attached units, is located on the northwestern corner of the property. Although some of those units are closer to the property line than 100 feet, Technical Staff notes that they are separated from the closest residential developments by a 250-foot wide Pepco utility easement and by Bowie Mill Road, with its ultimate right-of-way width of 80 feet. Exhibit 65, p. 17. Thus, they will not be within 100 feet of any adjoining land on which one-family detached homes can be built. Arguably, this plan does not comport with the wording of subsection 59-C-7.15(b)(1), because the proposed attached units would be within 100 feet of "*land for which the area master plan recommends a one-family detached zone.*" (i.e., the R-200 Zone). However, the proposal is clearly consistent with the intent of this provision, which is to ensure compatibility with adjacent single-family detached homes, because no such homes can be built within the Pepco easement or the Bowie Mill Road right-of-way. It must be remembered that the precise locations of the buildings on the Development Plan are illustrative, and they may be

that the green area may be reduced to some extent at Preliminary Plan and Site Plan reviews. Exhibit 65, pp. 17-18.

Section 59-C-7.17, Dedication of Land for Public Use

This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated in accordance with regulations and the Master Plan, with such dedications shown on all required development plans and site plans. The development plan in this case depicts 1.1852 acres of land dedicated to the Bowie Mill Road right-of way.⁵ Applicant also notes in its Pre-Hearing Statement (Exhibit 61(a), p. 17) that, “In addition, main circulation streets labeled on the Plan as Streets ‘A’, ‘B’ and ‘C’ will also be dedicated to public use.” Thus, a determination of the precise amount of land to be dedicated will have to await site plan and preliminary plan review.

Section 59-C-7.18, Parking Facilities

This section requires that off-street parking be provided in accordance with Zoning Ordinance Article 59-E. Under §59-E-3.7, two parking spaces are required for each single-family dwelling unit. There will be a maximum of 114 single-family dwelling units, and therefore 228 parking spaces off of the public streets must be provided. As shown on the Development Plan, Applicant’s plan is to provide a total of 243 such spaces, with 138 of those to be provided on individual lots and 105 to be provided on private streets. Technical Staff noted that Applicant “will have to demonstrate at site plan that [the dimensions of] the proposed parking spaces satisfy parking code standards.” Exhibit 65, p. 18.

In sum, the District Council concludes that the proposed rezoning and the Development Plan will be consistent with the purpose clause and all applicable standards for the PD-3 Zone.

changed at site plan review if it is determined that compliance with this statutory provision requires an increase in the setbacks in the northwest portion of the development.

2. Safety, Convenience and Amenity of Residents

The next part of “Finding (b)” required by Section 59-D-1.61 is a determination that the proposed development would provide the “maximum safety, convenience, and amenity of the residents.” Since this required finding is practically identical with one of the purpose clause requirements for the PD-3 Zone, it has been discussed in that context above.

The District Council finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

3. Compatibility with Adjacent Development

The final required determination under “Finding (b)” is that the proposed development be compatible with adjacent development. For the reasons discussed above in connection with the Purpose Clause of the PD-3 Zone, the District Council concludes that the proposed residential dwelling units will be compatible with other uses existing or proposed in the vicinity of the planned development.

§59-D-1.61(c): safe, adequate and efficient internal vehicular and pedestrian circulation systems.

The third required finding is “[t]hat the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.”

Applicant’s transportation planning expert, Edward Papazian, testified that the vehicle circulation system is well laid out. Multiple internal roadways will help to disperse the traffic. The intersections are at clear right angles, and the intersections and the junctions are well-spaced so that vehicles don’t have to make sudden turns or dogleg movements. Also, there are pedestrian paths, so pedestrians will not be walking in the vehicle travel way. Thus, the vehicle and pedestrian circulation system would operate in a safe and efficient manner.

⁵ Typos in the Technical Staff report result in the dedication being listed there as 1.85 acres instead of the correct figure of 1.185 acres. Exhibit 65, pp. 4 and 18.

Applicant's civil engineer, Ed Wallington, also did line-of-sight studies for the two proposed access roadways. He testified that the new access points are located opposite existing access points on the other side of the road, and that is considered favorable. The general grade of the road is also quite favorable for sight distance, and there is easily adequate distance for cars to pull safely in and out. Tr. 284-286. A sight distance evaluation will also be done at preliminary plan of subdivision to make sure that the drivers entering and exiting the driveways have adequate sight distance along Bowie Mill Road.

Accordingly, the District Council finds that the proposed circulation systems and site access would be safe, adequate and efficient for both vehicular and pedestrian traffic.

§59-D-1.61(d): preventing erosion, preserving vegetation, forest conservation and water resources.

The subject site is not within a Special Protection Area or Primary Management Area. According to Mr. Wallington, the existing grading conditions at the site are actually quite favorable for grading the new street and lot pattern proposed here. One of the objectives of the environmental site design is to avoid large cuts or fills on a project and to follow the existing grading conditions as much as possible to minimize grading. On this site, Applicant will be able to follow existing grading patterns. Tr. 287-288.

Environmental issues were discussed in Part III.D.5. of the Hearing Examiner's report. Applicant has been sensitive to environmental concerns, and the entire record indicates that Applicant's plans take due care to protect the environment. The Preliminary Forest Conservation Plan has been approved by the Planning Board, and the Department of Permitting Services has approved the stormwater management concept plan. Both plans will be reviewed in connection with site plan and subdivision.

In sum, the District Council finds that Applicant has demonstrated the environmental controls required by "Finding (d)."

§59-D-1.61(e): common area maintenance.

The fifth required finding is “[t]hat any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.”

Montgomery County is the owner of the site, and the Applicant is the contract purchaser. Exhibit 84. Applicant submitted an illustrative homeowners association “Declaration of Covenants, Conditions and Restrictions” that describes the proposed ownership and maintenance of common areas by a homeowners association, after development. Exhibit 13, Article XIII.

The District Council finds that Applicant has sufficiently demonstrated both its interest in the property and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

The Public Interest

The Applicant must show that the proposed reclassification is sufficiently in the public interest to justify its approval. The State Zoning Enabling Act applicable to Montgomery County requires that all zoning power must be exercised:

. . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district. [Regional District Act, Maryland-National Capital Park and Planning Commission Article (Art. 28), Md. Code Ann., § 7-110].

When evaluating the public interest, the District Council normally considers Master Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment and public benefits such as provision of affordable housing.

The issue of Master Plan conformance was discussed above. As outlined there, Applicant’s proposal is consistent with the recommendations, goals and objectives of the 2005 Olney Master Plan. The Planning Board and its Technical Staff both support the proposed rezoning. The impact on public

facilities was also discussed above. The evidence indicates that transportation, schools and water and sewer services would not be adversely affected by the proposed development.

Joseph Giloley of the Montgomery County Department of Housing and Community Affairs (DHCA) testified on behalf of the property owner, Montgomery County. Mr. Giloley stated that approval of this local map amendment will enable the property to be developed with many more MPDUs and workforce housing units than under the current R-200 Zoning. Therefore, development of this property implements pertinent County policies to provide affordable housing on this site. According to Mr. Giloley, the subject zoning application is consistent with the County's development agreement, as outlined in the Technical Staff report. It is also consistent with all the requirements of the PD-3 Zone. The County therefore strongly recommends approval of the zoning application. Tr. 19-36. This testimony was also buttressed by a letter, dated March 22, 2010, from DHCA stating that DHCA "strongly supports" approval of the rezoning. That letter is attached to the Technical Staff report (Exhibit 65).

Although the surrounding communities have some legitimate concerns, they have been largely addressed by the Applicant's agreement to additional binding elements and by the relief of traffic congestion which will be provided by the ICC. The proposed project will offer a mix of housing opportunities, including affordable housing, in a manner which is sensitive to the environment and compatible with the surrounding area.

For the reasons discussed above, the District Council concludes that the proposed development would be in the public interest.

Conclusion

Based on the foregoing analysis and the Hearing Examiner's report, which is incorporated herein, and after a thorough review of the entire record, the District Council concludes that the proposed development satisfies the intent, purpose and standards of the PD-3 Zone; that it meets the

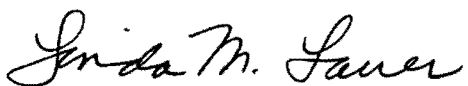
requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; that the application proposes a project that would be compatible with development in the surrounding area; and that the requested reclassification to the PD-3 Zone has been shown to be in the public interest. For these reasons and because approval of the instant zoning application will aid in the accomplishment of a coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District, the application will be approved in the manner set forth below.

ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-885, requesting reclassification from the R-200 Zone to the PD-3 Zone, of a 32.74-acre parcel of unimproved land, known as Parcel P850, located at 18241 Bowie Mill Road, about half a mile west of Laytonsville Road, in Olney, Maryland, is hereby approved in the amount requested and subject to the specifications and requirements of the revised Development Plan, Exhibits 132(a) and (b), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, as required under Code §59-D-1.64.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council